

REMARKS

Claims 27 and 29-37 are currently pending in this application. Claim 30 has been amended to recite “breast cancer or epidermoid cancer” for each occurrence of the term “cancer.” Support for these claim amendments can be found throughout the specification as originally filed. No new matter has been added by these amendments.

Amendment of the claims should not be construed as acquiescence to any of the rejections set forth in the Office Action and was done solely to expedite prosecution of the application. Applicant respectfully reserves the right to pursue the claims as originally filed or similar claims as well as any non-elected, canceled or otherwise unclaimed subject matter in one or more continuation, continuation-in-part, or divisional applications.

Reconsideration and withdrawal of the objections to this application in view of the amendments and remarks herewith, are respectfully requested, as the application is in condition for allowance.

Applicant thanks the Examiner for withdrawing the prior rejections under 35 U.S.C. §112, first paragraph and under 35 U.S.C. §103(a).

Rejections under 35 U.S.C. §112, first paragraph

Claim 30 remains rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the enablement requirement. The Examiner states that the specification is “enabling for treating people with breast and epidermoid cancer [but] does not reasonably provide enablement for treating breast and epidermoid cancer with people who have another form of cancer.”

Without conceding the validity of the Examiner’s rejection and solely for the purposes of advancing prosecution, Applicant has amended claim 30 to recite breast cancer or epidermoid cancer” for each occurrence of the term “cancer.”

Applicant respectfully requests that the rejections under 35 U.S.C. §112, first paragraph, be reconsidered and withdrawn.

Double-Patenting Rejection

Claims 27 and 29-37 are provisionally rejected on the grounds of non-statutory obviousness-type double patenting over Claims 1-11 of co-pending U.S. Patent Application Serial No. 10/520,769.

Without conceding the validity of the Examiner's rejections, Applicant submits herewith a duly executed Terminal Disclaimer in compliance with 37 C.F.R. §1.321(c) over U.S. Patent Application Serial No. 10/520,769, thereby obviating the provisional obviousness-type double patenting rejection. Applicant notes that by way of the assignment submitted under separate cover to the assignment branch (a copy of which is enclosed herewith), the common ownership of the instant application and the 10/520,729 application is now in the names of Dr. Wolfgang Richter and Gesellschaft fuer Biotechnologische Forschung mbH (GBF). Applicant further notes that the prior owner of the application was incorrectly recorded as Morphochem Aktiengesellschaft Fur Kombinatorische Chemie. The proper assignment is in the name of R&D-Biopharmaceuticals GmbH. A Corrected Recordation Cover Sheet has also been submitted under separate cover to the assignment branch (a copy of which is also enclosed herewith).

Accordingly, Applicant respectfully requests withdrawal of the provisional obviousness-type double patenting rejection.

CONCLUSION

In view of the amendments and remarks made herein, the present application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are respectfully requested. Please charge any required fee or credit any overpayment to Deposit Account No. 04-1105.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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